IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. No. 8622 of 2007

DATE OF DECISION: 07.09.2007

Chandigarh Aarhti Association and others

…Petitioners

Versus

Chandigarh Administration and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Mohan Jain, Senior Advocate, with
Mr. Dinesh K. Thakur, Advocate,
for the petitioners.

Mr. B.L. Gulati, Advocate,
for respondent Nos. 1 to 4 and 6.

Mr. J.R. Sayal, Advocate,
for respondent No. 5.

Mr. H.S. Dhandi, Advocate,
for respondent No. 7.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for issuance of a writ in the nature of mandamus commanding the respondents to reimburse payment of incentive bonus on paddy procurement, which has already been paid by the petitioners for the Kharif Marketing Season 2006-07 as per the instructions issued by respondent No. 6 while implementing policy decision dated

25.8.2006 of the Government of India (P-1). It has further been prayed that the respondents be directed to give an undertaking with regard to exemption of bonus amount from State Taxes in the same manner as has been done by the State of Punjab by carrying necessary amendment in the Punjab Value Added Tax Act, 2005 (for brevity, 'the Act'). Still further it has been prayed that the respondents be directed to adopt the amendment as has been done in the Act with regard to exemption of incentive amount from State Tax and levy(s) in terms of the Punjab Re-organization Act, 1966 (for brevity, 'the 1966 Act'), in order to implement policy dated 25.8.2006.

Facts may first be noticed. The petitioners herein are dealers and commission agents of agricultural produce including paddy and are operating from Grain Market Chandigarh. They are carrying on their business under the supervision and control of Market Committee Chandigarh of which Deputy Commissioner, Chandigarh-cum-Secretary, State Agricultural Marketing Board, U.T. Chandigarh-respondent No. 5 is the administrative head. For paddy procurement during Kharif Marketing Season 2006-07, the Government of India, Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, took a policy decision and decided that for procurement of paddy, incentive bonus of Rs. 40/- per quintal may be granted over and above the announced Minimum Support Price (MSP) of Rs. 580/- and Rs. 610/- per quintal in respect of 'Common' and Grade 'A' varieties of paddy respectively. In this regard a circular letter dated 25/26.8.2006, was issued to all the Principal Secretary (Food) of different States

including U.T. Chandigarh. It was specifically stipulated that State Government was to fully exempt this bonus amount from all State taxes and levies. The incentive bonus was applicable for the period 1.10.2006 to 31.3.2007. All the State Governments/Union Territories were directed to issue instructions/orders in this regard to the concerned State Agencies to implement the said decision of the Government (P-1). On 26.9.2006, the District Food and Supplies and Consumer Affairs Officer, U.T. Chandigarh-respondent No. 6, requested the Secretary, Market Committee, Chandigarh-respondent No. 5 to issue necessary instructions to the concerned staff of the Market Committee to comply with the decision of the Government of India with indication in Form 'J' (P-2). In order to give incentive bonus of Rs. 40/- per quintal on paddy, respondent No. 5 sent a letter dated 27.9.2006 to the President of petitioner No. 1 Association and asked to comply with the decision of the Government of India by conveying the same to all the concerned commission agents (*Arhtiyas*) (P-3). The petitioners complied with the aforementioned instructions and payments of incentive bonus @ Rs. 40/- per quintal was made to the farmers, which was over and above Minimum Support Price, on procurement of paddy during Kharif Marketing Season 2006-07. The details of the payments made by various petitioners are as under:-

Sr. No.	Name of firm	Amount in Rupees
1.	Kanhiya Lal Madho Ram	3,02,946.00
2.	Ganesh Store	8,15,150.40
3.	Sulekh Chand Sat Dev	98,182.00

4.	Mittal Corporation	3,66,527.00
5.	Ram Sarup Sushil Kumar	2,48,108.00
6.	Krishan Lal Kulbhushan Rai	1,90,358.00
7.	Madan Pal Krishan Lal	1,50,122.00
8.	Bhagwan Dass Inder Raj	3,73,982.00
9.	Kulwant Rai Gian Chand	5,96,343.00
10.	Baldev Kishan & Co.	1,91,380.00
11.	Ram Gopal Hari Kishan Jain	1,84,849.50
12.	Madan Lal Vikas Kumar	3,62,628.00
13.	Kishori Lal Girdhari Lal & Co.	2,26,044.00
14.	Rajan Trading Company	2,78,656.00
15.	Aggarwal Brothers	31,780.00
16.	Ram Kishan & Bros.	2,79,524.00
17.	Om Parkash Kamal Kumar	3,10,646.00
18.	Ranbir Singh Punia & Co.	2,00,340.00
19.	Punjab Trading Co.	3,66,123.60
20.	Dashmesh Trading Co.	2,57,838.00
		56,28,087.50 5831527.50 (?)

It is appropriate to mention here that the aforementioned amount of incentive bonus paid by the petitioners to the farmers was to be reimbursed to them through the Food Corporation of India-respondent No. 7. However, the aforementioned amount was not reimbursed to the petitioners and respondent No. 7 insisted for an undertaking from the U.T. Administration to the effect that the amount of incentive bonus paid on paddy procurement during Kharif Marketing Season 2006-07 was exempted from all types of taxes and levies. In this regard, letters dated 17.10.2006, and 23/24.10.2006 were written by respondent No. 7 to the Joint Director, U.T. Administration and the Excise & Taxation Officer, U.T.

Administration (P-5 & P-6). A perusal of letter dated 23/24.10.2006, reveals that in the case of Punjab Region, the FCI released the bonus amount of Rs. 40/- per quintal on purchase of paddy on an undertaking given by the Punjab Government that State Government was about to issue amendments/notification not to charge local taxes and levies on bonus payment. In respect of U.T. Chandigarh, it has been mentioned that the Joint Director, UT Chandigarh recommended for issuance of notification. Relevant extract of the letter dated 23/24.10.2006 (P-6) is reproduced as under:-

> " It may be added here that the Punjab Govt. has submitted an undertaking that State Govt. is shortly issuing amendments/notification not to give local taxes, levies on bonus payment. On receipt of undertaking from State Govt. the bonus amount Rs. 40/- PQ on purchase of paddy is being released in Punjab Region.
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> As regards release of incentive bonus for the procurement of paddy by FCI, Chandigarh in UT, Chandigarh mandi, the matter has been taken up with Jt. Director, UT, Chandigarh who is (in?) turn has reportedly recommended the case to your good office for issue of notification. Till the notification is issued, you are requested to submit an undertaking that UT Administration, Chandigarh will fully exempt this bonus amount from all State Taxes and levies for KMS 2006-07 as stated by Punjab Govt. so that bonus amount may be released to the farmers against the purchase made in Chandigarh mandi as per Govt. of India instructions and

specifications w.e.f. 25.09.2006 since the farmers & Aarhtias are pressing very hard for early payment."

However, the Excise and Taxation Commissioner-respondent No. 4 showed its inability to give such an undertaking or give exemption of bonus from levy of VAT on the pretext that under the provisions of the Act (as applicable to Chandigarh) there is no provision to exempt any particular portion of sale turnover from levy of VAT and the same can be granted only if any amendment is carried out by the Punjab Government in the Act (P-7).

The Government of Punjab has already promulgated an Ordinance, being Ordinance No. 1 of 2007, under clause (1) of Article 213 of the Constitution on 26.12.2006, which was published in the Punjab Government Gazatte (Extra), dated 12.1.2007 (P-9), whereby an amendment has been brought about in Section 2 of the Act w.e.f. 1.4.2006. The relevant portion of the aforementioned Gazette notification reads as under:-

"1. (1) This Ordinance may be called the Punjab Value Added Tax (Third Amendment) Ordinance, 2006;

(2) It shall be deemed to have come into force on and with effect from the 1st day of April, 2006.

2. In the Punjab Value Added Tax Act, 2005, in section 2:-

(a) In clause in the Explanation, after item (2), the following item shall be added, namely:-

"(3) The amount of bonus, granted as an incentive by the Government of India from time to time in; respect of wheat and paddy purchased for

the central pool by the procurement agencies, shall not form part of the purchase price of those commodities." and

(b) in clause in the Explanation, after item (6), the following item shall be added, namely:-

"(7) The amount of bonus, granted as an incentive by the Government of India from time to time in respect of wheat and paddy purchased for the central pool by the procurement agencies, shall not form part of the sale price of those commodities."

After promulgation of the aforementioned Ordinance, petitioner No. 1 Association again made a detailed representation to respondent No. 4, dated 5.2.2007, requesting to consider their case at the earliest (P-10). When repeated representations (P-12 to P-18) made by the petitioners through their Association (Petitioner No. 1), did not yield any result, a legal notice dated 20.4.2007 was sent by the petitioners to the respondents (P-20). On 21.5.2007, respondent No. 6 gave reply to the legal notice that the Ordinance issued by the State of Punjab cannot be made applicable to the Union Territory, Chandigarh until and unless the aforesaid Ordinance becomes an Act (P-21). The stand taken by respondent No. 6 in the aforementioned reply to the legal notice reads as under:-

" This ordinance relates to the payment of incentive bonus on paddy procurement during Kharif Marketing Season 2006-07. In Union Territory Chandigarh, the

Value Added Tax Act, 2005 has been got extended under Section 87 of the Punjab Re-organization Act, 1966. The amendment made in the Act by way of present Ordinance by the State of Punjab cannot be made applicable to the Union Territory, Chandigarh unless the aforesaid Ordinance becomes an Act. On the Ordinance becoming an Act, the Central Government in terms of the Provision of Section 87 of the Punjab Re-organization Act, 1966 has the power by notification in the official gazette to extend with such restrictions or modifications as it thinks fit, to the Union Territory of Chandigarh, the said enactment which is in force in the State of Punjab at the date of notification. The requisite proposal for such an extension is required to be mooted by the Chandigarh Administration in consultation with the law and Prosecution Department with such restrictions and modifications as it deems fit to the Union Territory, Chandigarh and then, on the issue of notification by the Central Government, the said amendments shall become applicable to the Union Territory, Chandigarh. The Administration has no option, but to wait for the said Ordinance becoming an Act and, thereafter, to have the same extended to the Union Territory, Chandigarh in terms of the provisions of Section 87 of the Punjab Re-organization Act, 1966. The issue relating to the extension of the amending

> Ordinance of 2006, on its becoming Act, shall extended to the Union Territory of Chandigarh as per the requirement of Section 87 of the Punjab Re-organization Act, 1966."

Mr. Mohan Jain, learned counsel for the petitioners reiterating the aforementioned factual position contented that due to administrative laxity and apathy the petitioners are suffering and their business is adversely affected because of depletion of their liquid cash and capital. He submitted that once the petitioners have given the incentive bonus @ Rs. 40/- per quintal on procurement of paddy to the farmers as per the policy decision of the Government of India, dated 25/26.8.2006 (P-1) and instructions dated 27.9.2006 (P-3) then it is incumbent upon respondent No. 7 to reimburse the same. Learned counsel has referred to the doctrine of '*legitimate expectation'* and argued that it is settled principle of law that the Government and its departments are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. In this regard he has placed reliance on a judgment of Hon'ble the Supreme Court in the case of **National Buildings Construction Corporation v. S.P. Singh, (1998) 7 SCC 66**.

Mr. H.S. Dhandi, learned counsel for the FCI-respondent No. 7 reiterated the stand taken in the written statement filed on behalf of respondent No. 7 that until and unless amendment in the Act is carried out or instructions are issued by the Union Territory, Chandigarh in respect of exemption of incentive bonus from State

taxes and levies, as has been done by the State of Punjab, it is not possible to reimburse due amount of the petitioners. He further submitted that even the Union Territory, Chandigarh, has not given any undertaking to the FCI to the effect that it is ready to brought about any such legislation paving the way for conditional payment.

Mr. B.L. Gulati, learned counsel for respondent Nos. 1 to 4 and 6 i.e. Union Territory, Chandigarh, after obtaining instructions has stated that a proposal of the U.T. Administration for carrying out amendment in the Act has already been sent and the same is pending consideration of the Central Government and, therefore, the FCI should have reimburse the due amount of incentive bonus to the petitioners which they have paid to the farmers on procurement of paddy during the Kharif Marketing Season 2006-07. he has stated that Union Territory undertakes that as and when the amendment is made in accordance with the amendment carried by State of Punjab, it shall do the needful.

Having heard learned counsel for the parties and perusing the record, nature of the dispute between respondent Nos. 1 to 4 and 6 on the one hand and respondent No. 7 on the other hand, we are of the view that the claim of the petitioners cannot be deferred for indefinite period as the Kharif Marketing Season 2006-07 is already over long time ago and the incentive bonus amount @ Rs. 40/- per quintal on procurement of paddy has been paid by the petitioners to the farmers, which is liable to be reimbursed to them. The amount of the petitioners as detailed in the earlier part of the judgment has been unnecessarily blocked due to laxity on the part of the respondents as is evident from the fact that in the Punjab Region,

taking prompt action State of Punjab has already promulgated Ordinance No. 1 of 2007 (P-9) and brought about necessary amendment in the Act retrospectively with effect from 1.4.2006, whereas in the case of U.T. Chandigarh the proposal is still pending consideration of the Central Government. The capital of an entrepreneur like the petitioners if remained blocked for such a long period, it would have perilous effect on their trading ability. Moreover, we find that the respondent Administration is bound by its promise to reimburse the amount to the petitioners once the petitioners have made payment to the farmers on their asking and promise. In this regard the matter is squarely covered by the judgment of Hon'ble the Supreme Court in the case of National Buildings Construction Corporation (supra) on which reliance has been placed by learned counsel for the petitioners. In para 18 of the judgment, following view, which is applicable to the facts of the present case, has been expressed by Hon'ble the Supreme Court:-

> "18. The doctrine of "legitimate expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of

> "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same was as claims based on promissory estoppel."

We further find that the principle of *'promissory estoppel'* as laid down by Hon'ble the Supreme Court in the case of **The Gujarat State Financial Corporation v. M/s Lotus Hotel Pvt. Ltd., AIR 1983 SC 848**, would also be applicable in the facts and circumstances of the present case. The petitioners cannot be left high and dry by the respondents after having issued direction to them, which have been followed by them by making payments of incentive bonus @ Rs. 40/- per quintal on procurement of paddy during Kharif Marketing Season 2006-07 to the farmers, as per the policy decision of Government of India, dated 25/26.8.2006 (P-1) and letter dated 27.9.2006 (P-3). The claim of the petitioners cannot be defeated by inter-departmental dispute between the U.T. Administration and respondent No. 7. There is now agreement between U.T. Administration and respondent No. 7 with regard to dispensing taxes as has been done by State of Punjab.

In view of the above, we allow this writ petition and direct respondent No. 7 to reimburse whole due amount of incentive bonus to the petitioners, which have been paid by them to the farmers as incentive bonus @ Rs. 40/- per quintal on procurement of paddy during Kharif Marketing Season 2006-07, as per the policy decision

of Government of India, dated 25/26.8.2006 (P-1) and letter dated 27.9.2006 (P-3). The petitioners are also held entitled to interest at the rate of 8% per annum from the due date till actual payment. The due amount along with interest be released to the petitioners within a period of one month from the date of receipt of certified copy of the judgment.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 7, 2007
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